

Message Text

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ACTION IO-11

INFO OCT-01 ISO-00 FEA-01 ACDA-05 AGR-05 AID-05 CEA-01

CEQ-01 CG-00 CIAE-00 CIEP-01 OFA-01 COME-00 DLOS-04

DODE-00 DOTE-00 EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00

H-02 INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

OES-03 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06

SAL-01 AF-06 ARA-06 EA-07 EUR-12 NEA-10 OIC-02 /150 W
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R 200045Z JAN 76

FM USMISSION USUN NY

TO SECSTATE WASHDC 5416

C O N F I D E N T I A L SECTION 1 OF 2 USUN 0180

E.O. 11652: GDS

TAGS: PLOS

SUBJ: LOS: DISPUTE SETTLEMENT TALKS (CDS)

1. SUMMARY: INFORMAL WORKING GROUP ON SETTLEMENT OF DISPUTES
MET JANUARY 15-16 TO REVIEW SINGLE NEGOTIATING TEXT ON DISPUTE
SETTLEMENT PREPARED BY CONFERENCE PRESIDENT AMERASINGHE.
ALTHOUGH ECUADOR AND PERU MADE PROCEDURAL ATTACK ON VALIDITY
OF DOCUMENT, REMAINING STATES, DESPITE SUBSTANTIVE DIFFERENCES,
ACCEPTED DOCUMENT AS BASIS FOR FURTHER WORK IN DISPUTE
SETTLEMENT AREA. DEBATE FOCUSSED MAINLY ON ARTICLE 9
(CHOICE OF FORUM) AND ARTICLE 18 (1) AND 2(A) (CDS IN
ECONOMIC ZONE). GROUP ALSO EXPRESSED VIEWS AS TO HOW
FUTURE WORK SHOULD PROCEED. EARLY PLENARY FORMAL DEBATE
ON CDS LIKELY. END SUMMARY

2. INFORMAL WORKING GROUP UNDER CHAIRMANSHIP OF AMBASSADOR
HARRY (AUSTRALIA) MET JANUARY 15-16 TO REVIEW SINGLE NEGOTIATING
TEXT PREPARED BY CONFERENCE PRESIDENT AMERASINGHE FROM
ALTERNATIVES WHICH WORKING GROUP HAD PRODUCED IN GENEVA.
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3. ALTHOUGH NEARLY 40 STATES, INCLUDING INDIA AND MEXICO (WHICH HAD NOT BEEN REPRESENTED AT PRIOR GROUP MEETINGS), PARTICIPATED IN MEETING, ONLY FIVE STATES -- AUSTRALIA, CANADA, FRG, SINGAPORE, AND US -- SENT REPRESENTATIVES WHO HAD PREVIOUSLY FOLLOWED ISSUE CLOSELY. DISCUSSION WAS THEREFORE NOT DETAILED, BUT MEETING NEVERTHELESS REVEALED SOME INTERESTING INFORMATION.

4. ECUADOR (AMBASSADOR VELASCO) AND PERU (AMBASSADOR ARIAS-SCHREIBER) ATTACKED LEGITIMACY OF DOCUMENT, CLAIMED PRESIDENT LACKED MANDATE TO PRODUCE SNT, AND STATED THAT CONFERENCE WILL DECIDE AT NEW YORK LOS MEETING VALIDITY OF DOCUMENT. FRG, DENMARK, UK, FRANCE, CANADA, JAPAN, NORWAY AND US IGNORED ECUADOREAN-PERUVIAN ARGUMENT AND, DESPITE STATED SUBSTANTIVE DIFFICULTIES WITH DOCUMENT, WELCOMED DOCUMENT AS POSITIVE STEP. SIGNIFICANTLY, USSR, WHICH HAD ATTACKED VALIDITY OF DOCUMENT IN US-USSR BILATERALS, DID NOT RAISE ISSUE, AND BRAZIL, REPRESENTED BY THOMPSON-FLORES, REMAINED SILENT.

5. EEC MEMBERS WERE WELL-COORDINATED. MEMBERS WHO SPOKE -- FRG, DENMARK, UK, FRANCE, AND NETHERLANDS -- ALL SUPPORTED PRESIDENT'S INITIATIVE PROCEDURALLY BUT MADE SUBSTANTIVE ATTACK ON LOS TRIBUNAL. ALL EXCEPT DENMARK STRONGLY SUPPORTED ARBITRATION; DENMARK SEEMS TO PREFER ICJ. AT THE END OF DISCUSSION OF SUBSTANCE, ECUADOR MADE INTERVENTION SUPPORTING LOS TRIBUNAL AS MOST APPROPRIATE DISPUTE SETTLEMENT MECHANISM. ARBITRATION WAS REJECTED AS TOO SLOW AND ICJ AS TOO QUOTE CLASSICALLY ORIENTED END QUOTE.

6. USSR (SMIRNOV) INTERVENTION FOCUSED ON STATE'S RIGHT UPON RATIFICATION TO CHOOSE PROCEDURE BY WHICH IT WANTED TO BE BOUND. INTERVENTION SUPPORTED NEED FOR QUICK SETTLEMENT OF DISPUTES AND, IN OBLIQUE REFERENCE EITHER TO ARTICLE 18 OF SNT OR FUNCTIONAL APPROACH, STATE'S RIGHT TO DETERMINE WHICH DISPUTES ARE NOT SUBJECT TO DISPUTE SETTLEMENT PROCEDURE. FRG AND JAPAN STRONGLY ATTACKED ARTICLE 18 EXCEPTIONS REGARDING ECONOMIC ZONE. PERU SAID THEY WERE NOT ENOUGH. CANADA IMPLIED THIS. US SUGGESTED GROUP OF 5 TEXT MERGING 18(1) AND 18(2), BUT WE FURTHER LIMITED THE EXCEPTION
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BY CHANGING THE WORDS "EXCLUSIVE JURISDICTION" TO "SOVEREIGN RIGHTS". CANADA CAUGHT THIS, AND AFTER PRIVATE EXCHANGE, WE AGREED THAT RELATIONSHIP BETWEEN OUR POLLUTION DISCUSSIONS AND ARTICLE 18 SHOULD BE DISCUSSED BETWEEN US, PREFERABLY BEFORE MARCH. AFTER OBJECTIONS WERE RAISED THAT US AMENDMENT ELOMINATED REFERENCE TO DISCRETION, US REP SUGGESTED "OFF THE TOP OF MY HEAD AND OBVIOUSLY WITHOUT COMMITMENT" THAT THE REFERENCE TO DISCRETION SHOULD NOT BE JURISDIC-

TIONAL, BUT MIGHT BE IN A DIRECT ARTICLE ALONG THE FOLLOWING
LINES: "DISPUTE SETTLEMENT ORGANS SHALL NOT INTERFERE
WITH THE LAWFUL EXERCISE OF DISCRETION BY STATES IN ACCORDANCE
WITH THE PRESENT CONVENTION."

7. MEETING GAVE GOOD OPPORTUNITY TO REVIEW US POSITION
AND RELEVANT PROBLEMS WITH SNT. WITH MAY PERMANENT MISSION
PERSONNEL PRESENT, WE HAVE SOME HOPE OF DETAILED REPORTING
TO CAPITALS.

8. AT CARACAS AND GENEVA SESSIONS, DISPUTE SETTLEMENT HAD, FOR
MOST PART, BEEN DEALT WITH AT SCHOLARLY, NOT POLITICAL,
LEVEL. CANADA (DEMESTRAL) TWICE REQUESTED DISCUSSION OF
FUTURE WORK OF CDS. THREE PROBLEMS ARE RAISED. FIRST,
THERE HAS NEVER BEEN ON-THE-RECORD DEBATE ON CDS, AND THIS
MAY BE NECESSARY TO ALLOW LATINS TO GET THEIR POSITION ON
THE RECORD. SECOND, AT LEAST ECUADOR AND PERU SAY THEY
WILL FORMALLY RAISE ISSUE OF STATUS OF SNT. THIRD, FORUM
MUST BE FOUND FOR POLITICAL NEGOTIATIONS AS WELL AS EXPERT
WORK ON SUBJECT, AND FOR ULTIMATE FORMAL LINK TO WORK
OF CONFERENCE. THIS COULD BE DONE IN PRESENT GROUP, BUT
ONLY IF NATURE OF REPRESENTATION IS UPGRADED, AND SOME
OFFICIAL MANDATE IS ULTIMATELY OBTAINED.

9. BRAZIL (THOMPSON-FLORES) TOLD US PRIVATELY "DISPUTE
SETTLEMENT IN AREAS OF NATIONAL JURISDICTION IS NON-
NEGOTIABLE. YOU HAVE YOUR NON-NEGOTIABLE ISSUES AND WE
HAVE OURS." WHEN ASKED IF THIS EXTENDED TO NAVIGATION,
HE SAID "NOTHING IN AREAS OF NATIONAL JURISDICTION."
IN RESPONSE TO COMMENT THAT THIS COULD COMPLICATE FOR
EXAMPLE ABILITY TO REACH AGREEMENT ON COASTAL STATE POLLUTION
RIGHTS, HE SHRUGGED (SEEMINGLY IMPLYING THAT IS JUST
FINE FROM HIS POINT OF VIEW). WE TOOK THE OCCASION
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TO INFORM THE CANADIANS OF THE EXCHANGE, WHO PREDICTABLY
REACTED WITH CONCERN THAT THEIR POLLUTION OBJECTIVES
MAY BE PREJUDICED.

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ACTION IO-11

INFO OCT-01 ISO-00 FEA-01 ACDA-05 AGR-05 AID-05 CEA-01

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OES-03 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06

SAL-01 AF-06 ARA-06 EA-07 EUR-12 NEA-10 OIC-02 AS-01

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TO SECSTATE WASHDC 5417

C O N F I D E N T I A L SECTION 2 OF 2 USUN 0180

10. LIST OF PARTICIPANTS FOLLOWS:

MEETING OF INFORMAL WORKING GROUP ON
SETTLEMENT OF DISPUTES

NEW YORK - 15-16 JANUARY 1976

LIST OF PARTICIPANTS

AUSTRALIA - AMB. RALPH L. HARRY (CHAIRMAN)
MR. R. HUGH WYNDHAM

BRAZIL - MR. SERGIO MARTINS THOMPSON-FLORES

BULGARIA - MR. VALENTINE BOJLOV

CANADA - MR. A.L.C. DE MESTRAL

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CHILE - MR. JUAN CARLOS VALERO

COLOMBIA - AMB. GERMAN ZEA

CZECHOSLOVAKIA - MR. KARAL FAKTOR

DENMARK - MR. EIGIL PEDERSON

ECUADOR - AMB. RAFAEL GARCIA VELASCO

FRANCE - MR. JOSEPH RAPIN

GERMAN DEMOCRATIC REPUBLIC - MR. DICTMAR HUCKE

GERMANY, FEDERAL REPUBLIC OF - PROF. GUENTHER JAENICKE

GREECE - MR. ATHANESSIOS THEODOPACOPOULOS

GUATEMALA - AMB. J. LUIS GRANTES-LUNA

HUNGARY - MR. GYULA SZELCI

INDIA - MR. G. S. RUJU

INDONESIA - MR. NOEGROHO WISNOEMOERTI

IRAN - DR. HARAI DAO BAVAND

JAPAN - MR. HIROAHI SHIGATA

MALAYSIA - MR. K. AZZAT

MALTA - MR. CHALRES VELLA

MEXICO - MR. VICTOR N. DELGADO

NEPAL - AMB. SHAILENDRA KUMAR UPADHYAY

NEW ZEALAND - MR. W. R. MANSFIELD

NORWAY - PROF. CARL FLEISCHER

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PERU - AMB. ALFONSO ARIAS SCHREIBER
MR. JORGE CHAVEZ

PHILIPPINES - MR. LAURO L. BAJA, JR.

POLAND - MR. BOGDAN J. ZEJMO

SINGAPORE - AMB. T.T. B. KOH

SPAIN - MR. ANTONIO ELIAS
MR. ENRIQUE ROMEU

THAILAND - MR. SOMPHAND KOKILANON

TURKEY - MR. ALTAN GUVEN

UKRAINIAN SSR - MR. NIKOLAI MAKAREVITCH

USSR - MR. SERGEI N. SMIRNOV
MR. NIKOLAI N. FIRYUBIN

UK - MR. DAVID LOGAN

USA - MR. BERNARD N. OXMAN
MR. ROGER H. HULL
MR. JOHN FAIGLE

RAPPORTEUR: PROF. L. B. SOHN

FIJI - MR. SATYA N. NANDAN

GUINEA - MR. MAXIME CAMARA

JAPAN - MR. KENZO OSHIMA

NETHERLANDS - MR. FIDDO P. HOFSTEE

NICARAGUA - AMB. JOSE M. ZELAYA U.

PAKISTAN - MR. KHALID MAHMOOD
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PANAMA - AMB. DIDIMO RIOS

PARAGUAY - DR. LUIS GONZALEZ ARIAS

SWITZERLAND - MR. JACQUES REVERDIN

UNITED STATES OF AMERICA - AMB. T. VINCENT LEARSON

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